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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

19 IN RE: UBER TECHNOLOGIES, INC.,
20 PASSENGER SEXUAL ASSAULT
21 LITIGATION

Case No. 3:23-md-03084-CRB

22 This Document Relates to:

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA, LLC'S
POSITION PAPER ON THE APPLICATION OF
PRETRIAL ORDER NO. 17 TO DEFENDANTS'
MOTIONS TO DISMISS PURSUANT TO
FLORIDA, ILLINOIS AND NEW YORK LAW**

23 ALL ACTIONS

Judge: Hon. Charles R. Breyer
Courtroom: Courtroom 6 – 17th Floor

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INTRODUCTION

Pursuant to the Court’s direction at the August 29, 2024 Case Management Conference, Uber respectfully submits that in light of the Court’s Order on Uber’s Motions to Dismiss Plaintiffs’ claims under California and Texas law (Pretrial Order No. 17 or “PTO 17”), the pending Motions to Dismiss Plaintiffs’ claims under Florida, Illinois and New York law should be resolved as follows:

(1) Dismiss Plaintiffs' vicarious liability claims (Claim G) under Florida, Illinois and New York law because they fail to allege cognizable claims under any theories of *respondeat superior*, apparent agency, ratification, or common carrier non-delegable duties;

(2) Dismiss Plaintiffs' fraud-related claims (Claim C) because they are not pled with the particularity required under Federal Rule of Civil Procedure 9(b);

(3) Dismiss Plaintiffs' negligent infliction of emotional distress claims (Claim D) because they are not independent causes of action under Florida, Illinois or New York law and, in any event, Plaintiffs' allegations fail to adequately plead the requisite elements;

(4) Dismiss Plaintiffs' negligent entrustment claims (Claim B) because the allegations that Uber permitted drivers to use its trademarked decals and signage fail to state a cause of action under Florida, Illinois or New York law;

(5) Dismiss Plaintiffs' products liability claims (Claim H) because they fail to adequately allege causation; and

(6) Dismiss Plaintiffs' claims for injunctive relief (Claim I) because Plaintiffs do not have Article III standing to bring such claims for relief.

Uber does not seek dismissal of Plaintiffs' punitive damage claims for relief at this time and reserves the right to do so later.

ARGUMENT

I. VICARIOUS LIABILITY

Plaintiffs' theories of vicarious liability - - *respondeat superior*, apparent agency, ratification, and common carrier non-delegable duties - - each fail under Florida, Illinois and New York law.

1 At the threshold, Florida's Transportation Network Company ("TNC") statute -- like the
 2 Texas TNC statute -- specifically bars vicarious liability claims asserted against TNCs like Uber.
 3 In addition:

4 **Respondeat superior** -- Plaintiffs do not assert *respondeat superior* as a basis for vicarious
 5 liability under Florida or New York law; that theory is asserted only under Illinois law, *see* MTD
 6 Opp. (ECF No. 518) at 46-48, but it fails under Illinois law because the alleged sexual assaults
 7 were not committed within the scope of employment. Unlike California law, Illinois courts focus
 8 on the motivating emotions of the assailant, and do not apply the foreseeability test or other policy
 9 factors this Court considered under California law.

10 **Apparent Agency** -- Plaintiffs' apparent agency theory fails under the laws of Florida,
 11 New York and Illinois. As with Texas and California law, the laws of all three states hold that
 12 apparent agency claims are limited by scope-of-employment or scope-of-agency analyses.
 13 Plaintiffs' opposition brief did not argue that sexual assault is within the scope of employment
 14 under Florida or New York law, (*see* MTD Opp. at 61-62 and 63-64), thus Plaintiffs have waived
 15 those arguments. Under Illinois law, the alleged sexual assaults were not within the scope of
 16 employment or agency, and Plaintiffs' apparent agency claim should be dismissed for the same
 17 reasons as their *respondeat superior* claim.

18 **Ratification** -- The laws of Florida, Illinois and New York all require allegations that the
 19 defendant knew and approved of the particular incidents at issue. Thus, Plaintiffs' ratification
 20 theory suffers from the same pleading deficiencies as under Texas and California law, and should
 21 be dismissed on that basis.

22 **Common Carrier** -- Plaintiffs do not assert common carrier claims under New York
 23 law. Plaintiffs' common carrier claims must be dismissed under Florida law (for all incidents) and
 24 Illinois law (for incidents occurring before January 1, 2024) because those states have statutes
 25 declaring that TNCs like Uber are not common carriers.¹

26
 27 ¹ Plaintiffs suggest that they will amend the Master Long-Form Complaint with respect to Illinois
 28 law. *See infra* Section I.E.2. Uber reserves its right to move to dismiss any such amended claim.

1 **A. Under Florida Law, Plaintiffs' Vicarious Liability Claims Should Be
2 Dismissed Because They Are Barred by the Florida TNC Statute**

3 In addressing the Texas TNC Statute in PTO 17, the Court found that, as a general matter,
4 the "unambiguous language" of "the Texas TNC Statute bars vicarious[] liability under Texas law
5 for claims like Plaintiffs'." Order at 13. Like the Texas statute, the Florida TNC Statute uses
6 "broad language that captures claims against TNCs based on injuries to plaintiffs caused by TNC
7 drivers while those drivers are driving for the TNC." Order at 13. *Compare Tex. Civ. Prac. &*
8 *Rem. Code § 150E.002(3)* (precluding vicarious liability for claims "aris[ing] out of the ownership,
9 use, operation, or possession of a network vehicle while the vehicle's driver or passenger was
10 logged on to a transportation network company's digital network") *with Fla. Stat. § 627.748(18)*
11 (precluding vicarious liability for claims "for harm to persons or property which results or arises
12 out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the
13 driver is logged on to the digital network"). *See* FL MTD (ECF No. 386) at 6.

14 The grounds for dismissal of the vicarious liability claims under Florida law are, if
15 anything, stronger than under Texas law. Under the Texas statute, the Court found that "if the
16 facts ultimately support the view that Uber acted with gross negligence under Texas law, then
17 Plaintiffs may be able to get around the Texas TNC Statute's restrictions on vicarious liability."
18 Order at 14. *See Tex. Civ. Prac. & Rem. Code § 150E.003(a)(1)* (providing that a TNC may not
19 be held vicariously liable if "the claimant does not prove by clear and convincing evidence that
20 the company was grossly negligent with respect to the subject claim"). The Florida TNC Statute,
21 by contrast, contains no similar exception for gross negligence, and there is no allegation that Uber
22 has not "fulfilled all of its obligations under this section [of the Florida TNC Statute] with respect
23 to the TNC driver," or that Uber engaged in "negligence *under this section* or criminal wrongdoing
24 under the federal or Florida criminal code." Fla. Stat. § 627.748(18)(a)(1) & (a)(2) (emphasis
25 added).

26 The Florida statute's express terms also undermine Plaintiffs' assertion that the Florida
27 TNC statute bars vicarious liability *only if* the motor vehicle itself, rather than the driver, caused
28 harm. *See* MTD Opp. (ECF No. 518) at 18. That is not what the statute says. Instead, under the

1 statute, and consistent with the Court’s interpretation of the Texas TNC statute, the Florida TNC
 2 statute applies broadly to claims “for harm to persons or property which results or arises out of the
 3 use, operation, or possession of a motor vehicle operating as a TNC vehicle.” Fla. Stat.
 4 § 627.748(18)(a). *See* Uber MTD Reply (ECF No. 538) at 18-19. Although the statute may apply
 5 to circumstances in which a vehicle “caused harm to persons or property,” it also applies to bar
 6 vicarious liability in these broader circumstances, including those here, where Plaintiffs allege
 7 sexual assaults by drivers in the course of “us[ing], operat[ing], or possess[ing] a motor vehicle
 8 operating as a TNC vehicle.” *Id.* There was no carveout by the legislature that the statute would
 9 only apply to motor vehicle accident cases.

10 **B. Under Illinois Law, the Vicarious Liability Claims Should Be Dismissed
 11 Based On the Principles of *Respondeat Superior***

12 Under Illinois law, Plaintiffs’ vicarious liability claim based on *respondeat superior* should
 13 be dismissed. In holding that under California law, the scope-of-employment issue “presents a
 14 question of fact,” the Court relied on aspects of California law that are not present in Illinois case
 15 law. *See* Order at 16. The Court observed that the “leading [California] cases suggest what are,
 16 in effect, three different rules, and they do not explain how the different inquiries fit together.”
 17 Order at 16. The Court found that the “causal nexus rule”—which asks whether the “assault was
 18 engendered by work-related events or conditions”—is “the least favorable to Plaintiffs’ position.”
 19 Order at 22. If the emphasis is on the assailants’ “motivating emotions,” the Court explained, “the
 20 causal nexus inquiry would likely counsel against imposing respondeat superior liability.” Order
 21 at 23. On the other hand, the Court concluded that California’s “foreseeability rule” and “policy”
 22 factors—including “preventing recurrence, assuring compensation, and equitably spreading
 23 losses”—both “point in favor of liability.” Order at 17, 19-20.

24 There are not three (or two) different rules under Illinois law. Rather there is just the rule:
 25 Illinois courts apply a scope-of-employment test that is most akin to the “causal nexus” test, with
 26 its focus on the employee’s “motivating emotions.” Order at 23. Applying Illinois law, an
 27 employee’s tortious conduct is within the scope of employment if: “(a) it is of the kind he is
 28 employed to perform; (b) it occurs substantially within the authorized time and space limits; [and]

1 (c) it is actuated, at least in part, by a purpose to serve the [employer].” *Powell v. City of Chicago*,
 2 197 N.E. 3d 219, 223 (Ill. Ct. App. 2021). “An employee’s conduct must satisfy all three criteria
 3 or it is not within the scope of employment.” *Id.*

4 As to the first criteria, Illinois courts have “consistently found that sexual assault is not the
 5 kind of conduct that an employee is employed to perform.” *Powell*, 197 N.E. 3d at 224. For
 6 example, in *Powell*, an Illinois Appellate Court affirmed the granting of a motion to dismiss a
 7 vicarious liability claim against the city of Chicago, based on the theory that its employee, a police
 8 officer, sexually assaulted the plaintiff while he was in the officer’s custody. As the court
 9 explained, sexual assault was not within the officer’s scope of employment because “[s]exual
 10 assault committed by police officers has no relation to their duties and responsibilities” - - “it
 11 cannot be reasonably said that sexual assault was encompassed in [the officer’s] duties, was similar
 12 to those duties, or was reasonably foreseeable by the City.” *Id.* at 224.

13 *Powell* illustrates another way in which Illinois differs from California law. This Court’s
 14 analysis under California law found that there is tension between the causal nexus test and the
 15 foreseeability test, and reasoned that under California’s version of the foreseeability test, it was
 16 plausible that “sexual assault is a risk ‘inherent in or created by the enterprise’ that Uber has
 17 undertaken.” Order at 19. By contrast, Illinois law treats the concept of “foreseeability” as
 18 inherent in the first factor: tortious conduct cannot be foreseeable if it is not “encompassed in” or
 19 “similar to” the employee’s job duties. *Powell*, 197 N.E. 3d at 224. As the Illinois Appellate Court
 20 has explained, “foreseeability” is determined by the employee’s job duties *and not by the*
 21 *employer’s enterprise*. *Id.* For example, physical assault by a bouncer may be foreseeable because
 22 “it is expected that a bouncer will be required to use force in doing his job,” but sexual assault by
 23 a masseuse is *not* “reasonably foreseeable” because “it cannot reasonably be said that sexual
 24 assault by masseurs . . . was encompassed in their duties” or “was similar to those duties.”
 25 *Stern v. Ritz Carlton Chicago*, 702 N.E. 2d 194, 197-98 (Ill. Ct. App. 1998). Likewise, sexual
 26 assaults are *not* “encompassed in [the] duties” of independent drivers using the Uber App.

27 Because Illinois law requires satisfaction of all three scope criteria to find that an
 28 employee’s conduct is within the scope of employment, Plaintiffs’ vicarious liability claim should

1 be dismissed because there can be no reasonable argument that “sexual assault is the kind of
 2 conduct [drivers] [were] employed to perform.” *Powell*, 197 N.E. 3d at 223. But in case there is
 3 any doubt, Plaintiffs also cannot satisfy the third factor: that the alleged sexual assault was
 4 motivated, at least in part, “by a purpose to serve” Uber. *Id.* As demonstrated in Uber’s briefing,
 5 under Illinois law, “the term ‘scope of employment’ excludes conduct by an employee that is *solely*
 6 *for the benefit of the employee.*” *Deloney v. Board of Education of Thornton Tp.*, 666 N.E.2d 792,
 7 798 (Ill. Ct. App. 1996) (emphasis added) (holding that, as a matter of law, school board could not
 8 be vicariously liable for school truant officer’s sexual assault of student). See Uber IL MTD (ECF
 9 No. 388) at 6-7; Uber MTD Reply (ECF No. 538) at 6-8. Illinois courts have held that, as a general
 10 matter of law, “sexual assault by its very nature precludes a conclusion that it occurred within the
 11 employee’s scope of employment,” because it is “conduct by an employee that is *solely for his*
 12 *own benefit*” and “could in no way be interpreted as an act in furtherance of the” employer’s
 13 interest. *Doe ex rel. Doe v. Lawrence Hall Youth Servs.*, 966 N.E.2d 52, 57, 61-62 (Ill. App. Ct.
 14 2012) (emphasis added); see Uber IL MTD (ECF No. 388) at 6 n. 4 (citing cases).

15 Therefore, as discussed fully in Uber’s motion to dismiss briefing, Uber IL MTD (ECF No.
 16 388) at 6-7; Uber MTD Reply (ECF No. 538) at 6-8, Plaintiffs’ vicarious liability claims based on
 17 *respondeat superior* should be dismissed under Illinois law.

18 **C. Plaintiffs’ Apparent Agency Theory of Vicarious Liability Fails Under**
 19 **Florida, Illinois and New York Law**

20 In assessing Plaintiffs’ theory of vicarious liability based on apparent agency under the
 21 laws of California and Texas, the Court concluded that “the scope of liability under an apparent
 22 agency theory is limited by the usual scope-of employment rules.” Order at 25. Plaintiffs’
 23 vicarious liability claims under principles of apparent agency should be dismissed under the laws
 24 of Florida, Illinois and New York because even where a principal creates the appearance of agency,
 25 vicarious liability is limited to the agent’s acts within the scope of that agency. See, e.g., *Fi-*
 26 *Evergreen Woods, LLC v. Estate of Robinson*, 172 So. 3d 493, 498 (Fla. Dist. Ct. App. 2015); *Am.*
 27 *Bank of Cerro Gordo & Keith v. Illinois*, 37 Ill. Ct. Cl. 82, 87 (Ill. Ct. Cl. 1984); *Taylor v. The*
 28 *Point at Saranac Lake, Inc.*, 23 N.Y.S.3d 682, 684 (N.Y. App. Div. 2016). See Uber MTD Reply

1 (ECF No. 538) at 11-14.

2 The Court’s reasoning in dismissing Plaintiffs’ apparent agency theory under Texas law
 3 applies to the three other states’ laws as well: “Plaintiffs concede that Uber could not be
 4 vicariously liable under a theory of *respondeat superior*” in Texas. Order at 28. Likewise, under
 5 Florida law and New York law, Plaintiffs do not assert that Uber could be vicariously liable under
 6 a theory of *respondeat superior*, argue that sexual assault is within the scope of employment for
 7 the purposes of the apparent agency theory, or otherwise respond to Uber’s arguments that sexual
 8 assault is not within the scope of employment under the laws of Florida and New York. *See* MTD
 9 Opp. (ECF No. 518) at 40-47; *Linder v. Golden Gate Bridge, Highway & Transportation District*,
 10 2015 WL 4623710 (N.D. Cal. Aug. 3, 2015) (granting motion to dismiss where plaintiff’s
 11 opposition brief waived causation argument). Nor could they. As explained above, Florida’s TNC
 12 statute expressly provides that a TNC such as Uber cannot be held vicariously liable for injuries
 13 resulting from the alleged tortious conduct of independent drivers. Fla. Stat. § 627.748(18). *See*
 14 FL MTD (ECF No. 386) at 6. And New York law is clear that an employer cannot be vicariously
 15 liable for torts committed by an employee unless the conduct is part of the employer’s business
 16 and part of the employee’s job responsibilities. *Rivera v. New York*, 142 N.E.3d 641, 644-45 (N.Y.
 17 2019); *Phillips v. Uber*, 2017 WL 2782036 (S.D.N.Y. June 14, 2017); *see* NY MTD (ECF No.
 18 385) at 7-10; Uber MTD Reply (ECF No. 538) at 13-14.

19 Plaintiffs’ apparent agency theory similarly fails under Illinois law. As discussed above,
 20 it is well-established that, as a general matter, under Illinois law “sexual assault by its very nature
 21 precludes a conclusion that it occurred within the employee’s scope of employment.” *Doe ex rel.*
 22 *Doe*, 966 N.E.2d at 62; *see* Uber IL MTD (ECF No. 388) at 6 n. 4 (citing cases).

23 As this Court observed, “Plaintiffs have not identified any cases where an agent was held
 24 liable for a tort under an apparent agency theory that would not have given rise to vicarious liability
 25 even if the tortfeasor had been an actual agent.” Order at 25. *See* Uber MTD Reply (ECF No. 538)
 26 at 8-14. For all these reasons, as fully discussed in Uber’s motion to dismiss briefing, Plaintiffs’
 27 apparent agency theory of vicarious liability fails under Florida, Illinois and New York law.

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1 **D. Plaintiffs' Ratification Theory of Vicarious Liability Fails Under Florida,
2 Illinois and New York Law**

3 As to Plaintiffs' ratification theory of vicarious liability, the Court concluded that "the facts
4 alleged [in the Complaint] are insufficient to support a theory of ratification" under Texas or
5 California law. Order at 30. In particular, "the allegations do not support a plausible inference
6 that Uber knew about any given incident, nor do they permit inferences about what actions Uber
7 took with respect to particular drivers." *Id.* The Court's analysis applies with equal force under
8 the laws of Florida, Illinois and New York, which also require factual allegations that the defendant
9 knew of, and adopted and approved, the particular tortious conduct in question. *See* Uber FL MTD
10 (ECF No. 386) at 8-9; Uber IL MTD (ECF No. 388) at 8-9; Uber NY MTD (ECF No. 385) at 10-
11 11; Uber MTD Reply (ECF No. 538) at 16-17. The Complaint does not allege facts supporting
12 such a plausible inference as to any Plaintiff in any state. Indeed, Plaintiffs concede that they
13 cannot "point to 'a specific agent's specific alleged misconduct'" that Uber purportedly failed to
14 investigate or take appropriate action in response. *See* Uber MTD Reply at 14 (quoting Opp. at
15 49). Therefore, Plaintiffs' vicarious liability claims based on ratification should be dismissed
16 under the laws of each state.²

17 **E. Plaintiffs' Common Carrier Non-Delegable Duties Claims Should Be
18 Dismissed Under Florida and Illinois Law**

19 The Court dismissed Plaintiffs' common carrier non-delegable duties claims in Texas
20 because a Texas statute "expressly declared" that TNCs such as Uber are not common carriers.
21 Order at 31. The Court should dismiss these claims under both Florida law (for all incidents) and
22 Illinois law (for incidents occurring before January 1, 2024) because those states have similar
23 statutes expressly declaring that TNCs such as Uber are not common carriers.³

24 25 26 27 28 In response to the Court's observation that "the Defense Fact Sheets may help" some plaintiffs
 amend their complaints, to the extent that they provide information about "whether Uber learned
 about and ratified a given incident," Order at 31, Uber proposed "holding the deadline to amend
 ratification causes of action in abeyance until shortly after Defense Fact Sheets are provided." Joint
 CMC Statement at 11 (Aug. 27, 2024), Dkt. 1501.

 3 Plaintiffs do not assert this claim under New York law. *See* Master Complaint (ECF No. 269) at
 ¶ 386.

1 **1. Florida**

2 Like the Texas TNC statute, Florida's TNC statute declares that "a TNC or TNC driver is
 3 not a common carrier." Fla. Stat. § 627.748(2). *See* Uber FL MTD (ECF No. 386) at 23; Uber
 4 Reply Br. (ECF No. 538) at 24. Just as they argued under Texas law, Plaintiffs attempt to avoid
 5 the plain language of the Florida statute by arguing that the statute is limited to "regulatory"
 6 purposes as opposed to tort liability purposes. This argument is unavailing for the reasons already
 7 set forth in Uber's Reply Brief and the Court's Order, *see* ECF No. 538 at 24-26, and Order at 31
 8 and n. 11. Another court in this district recently ruled on this exact question, holding that the
 9 Florida statute declares that TNCs "like Uber and Lyft" are not common carriers for tort liability
 10 (or any other) purposes. *Means v. Lyft, Inc.*, 2024 WL 3012795, at *4 (N.D. Cal. June 13, 2024).
 11 In holding that the plaintiff in *Means* did "not have a common carrier claim under Florida law,"
 12 the court rejected the same arguments that Plaintiffs advance here regarding a purported distinction
 13 between "whether a company is a common carrier for purposes of the regulatory schemes" and
 14 "whether a company owes a common carrier's heightened duty for tort liability purposes." *Id.*
 15 The *Means* court distinguished the same cases that Plaintiffs relied on here for the same reasons
 16 outlined in Uber's Reply.⁴ Plaintiffs' common carrier non-delegable duties claims therefore must
 17 be dismissed under Florida law.

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⁴ In *Means*, the court distinguished these cases as follows:

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The statute there at issue [in *Nazareth v. Herndon Ambulance Serv., Inc.*, 467 So. 2d 1076, 1080 (Fla. App. 1985)], however, did not purport to define ambulances, or otherwise categorize them in any manner. Here, by contrast, § 627.28 expressly states a TNC 'is not a common carrier.' . . . *Means*' reliance on *Esurance Prop. Cas. & Ins. Co. v. Vergara*, No. 20-CV-81754, 2021 WL 2955962, at *5–6 (S.D. Fla. June 29, 2021) and *Checker Cab Operators v. Miami-Dade Cnty.*, 899 F.3d 908, 913 (11th Cir. 2018) likewise is unavailing. Although the courts in both cases referred to § 627.748 as regulatory, the issues presented therein were entirely distinct from the issue in the instant case. *See Esurance*, 2021 WL 2955962, at *6 (finding § 627.748 not relevant to interpretation of insurance policy's exclusion of vehicles "used as a public or livery conveyance"); *Checker Cab*, 899 F.3d at 913 (holding § 647.748 preempted local ordinance authorizing TNCs to operate without medallion).

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1 **2. Illinois**

2 Like Texas and Florida, until January 1, 2024, Illinois law provided that TNCs like Uber
 3 are not common carriers. 625 Ill. Comp. Stat. Ann. 57/25 (2023). *See* Uber IL MTD (ECF No.
 4 388) at 10; Uber MTD Reply (ECF No. 538) at 26. Therefore, Plaintiffs' common carrier non-
 5 delegable duties claims must be dismissed under Illinois law for any incident that occurred prior
 6 to January 1, 2024. Indeed, Plaintiffs conceded as much, suggesting that they might amend the
 7 Complaint to assert these claims under Illinois law for incidents occurring only *after* January 1,
 8 2024. Opp. at 26.

9 **II. PLAINTIFFS' FRAUD-RELATED CLAIMS SHOULD BE DISMISSED**

10 The Court's dismissal of Plaintiffs' fraud claims was based on Plaintiffs' failure to meet
 11 the heightened pleading standard applicable to fraud claims under Federal Rule of Civil Procedure
 12 9(b). Order at 35-37. In particular, the Court dismissed Plaintiffs' misrepresentation claims
 13 because "Plaintiffs do not dispute that they have not pled any plaintiff-specific allegations about
 14 whether a given plaintiff saw certain alleged misrepresentations, how they relied on them, and so
 15 forth." Order at 36. Similarly, in dismissing Plaintiffs' claims based on alleged omissions, the
 16 Court explained that "[a]ssessing whether Uber owed a given plaintiff a duty to disclose based on
 17 allegedly misleading partial representations depends on what the relevant partial representations
 18 were—which, again, depends on what a given plaintiff actually saw and relied upon," and which
 19 Plaintiffs failed to allege. *Id.* at 37. Since the same federal pleading standard applies to all of
 20 Plaintiffs' fraud claims irrespective of the residence of the Plaintiff or location of the incident, the
 21 same reasoning requires dismissal of Plaintiffs' fraud claims under Florida, Illinois and New York
 22 law.

23 **III. PLAINTIFFS' CLAIMS FOR NEGLIGENT INFILCTION OF EMOTIONAL
 24 DISTRESS SHOULD BE DISMISSED BECAUSE THOSE CLAIMS ARE NOT
 25 RECOGNIZED UNDER THE LAWS OF THE OTHER STATES**

26 This Court dismissed Plaintiffs' negligent infliction of emotional distress ("NIED") claim
 27 under California law because NIED is "not an independent tort, but the tort of negligence."⁵ For

28 ⁵ Plaintiffs withdrew their NIED claim under Texas law. Opp. at 3.

1 the same reason, Plaintiffs' NIED claim should be dismissed under Illinois, New York and Florida
 2 law as duplicative of Plaintiffs' negligence claims because the two claims are based on the same
 3 "operative facts and injury." *Pippen v. Pedersen & Houpt*, 986 N.E.2d 697, 705 (Ill. Ct. App.
 4 2013); *see Doe v. Uber Techs. Inc.*, 551 F. Supp. 3d 341, 364 (S.D.N.Y. 2021) (New York law
 5 prohibits NIED claim "if it is 'essentially duplicative of tort or contract causes of action.'"); *Singh*
 6 *v. Bascom*, 2010 Fla. Cir. LEXIS 7366, *3-4 (Fl. Cir. Ct. Dec. 14, 2010) (dismissing NIED claim
 7 because "Plaintiff already has stated a cause of action for negligence"). *See also* IL MTD (ECF
 8 No. 388) at 22; NY MTD (ECF No. 385) at 22; FL MTD (ECF No. 386) at 22; Uber MTD Reply
 9 (ECF No. 538) at 41-43.

10 Plaintiffs' NIED claim should be dismissed under Florida law for the additional reason that
 11 Plaintiffs fail to allege that they suffered emotional distress as a result of injury to another person
 12 to whom they have a "close personal relationship," as is required to state a viable claim for NIED.
 13 *Zell v. Meek*, 665 So. 2d 1048, 1054 (Fla. 1995); *see* FL MTD (ECF No. 386) at 22.

14 **IV. PLAINTIFFS' NEGLIGENT ENTRUSTMENT CLAIMS SHOULD BE
 15 DISMISSED**

16 The Court dismissed Plaintiffs' claim for negligent entrustment under California and Texas
 17 law principally because in both states, "the negligent entrustment cases uniformly concern
 18 instrumentalities that are themselves [] inherently dangerous in some way." Order at 38. The
 19 Court therefore dismissed Plaintiffs' negligent entrustment claim as it is premised on Plaintiffs'
 20 allegations that Uber permitted drivers to use its "trademarked decals and signage." *Id.* The same
 21 rationale requires dismissal of Plaintiffs' negligent entrustment claim under Florida, Illinois and
 22 New York law. *See* FL MTD (ECF No. 386) at 22-23; IL MTD (ECF No. 388) at 22; NY MTD
 23 (ECF No. 385) at 22; and Uber MTD Reply (ECF 538) at 45-46. As demonstrated by Uber,
 24 Plaintiffs cite no cases from any of these states holding that entrusting an ordinary, non-dangerous
 25 object like a decal or sign can be the basis for liability of an intentional tort (like sexual assault)
 26 committed by an alleged entrustee. *Id.*

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1 **V. PLAINTIFFS' PRODUCTS LIABILITY CLAIMS SHOULD BE DISMISSED
2 BECAUSE THEY FAIL TO PLAUSIBLY ALLEGE CAUSATION**

3 In dismissing Plaintiffs' product liability claims under California and Texas law, the Court
4 held that the claims "founder on the absence of individual allegations that make the causation
5 allegations plausible." Order at 47. In particular, the Court explained that in order to avoid
6 dismissal, "there need to be some allegations making causation plausible not just in a general,
7 abstract sense, but with respect to the claims of the actual plaintiffs in this MDL." *Id.* at
8 48. However, "neither the [Master Complaint] nor the short-form complaints contain any
9 description of the alleged incidents, nor do they otherwise explain how the absence of a given
10 feature caused any particular assault." *Id.* Because this fundamental pleading defect in Plaintiffs'
11 product liability claim applies to all Plaintiffs irrespective of the residence of the Plaintiff or
12 location of the incident, the claim should be dismissed under Florida, Illinois and New York law
13 as well.⁶

14 **VI. INJUNCTIVE RELIEF**

15 The Court dismissed Plaintiffs' claims for injunctive relief under the Unfair Competition Law
16 because Plaintiffs failed to plausibly allege Article III standing. Order at 48-52. In particular, the
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18 ⁶ Although the Court recognized that "[a]xiomatically, services are not products and do not give
19 rise to strict liability," PTO 17 at 44 (quoting Restatement (Third) of Torts: Prods. Liab. § 19(b)),
20 the Court concluded in PTO 17 that the Uber App may be characterized as a product, *id.* at 45.
21 But as noted above, the Court dismissed Plaintiffs' product liability claim on other grounds. Uber
22 maintains that, as a matter of law, the Uber App is not a "product" that may be subject to strict
23 liability claims, and that Plaintiffs' product liability claims fail because the Uber App is a service.
24 The allegations in the Complaint make crystal clear that the Uber App is a service, and was used
25 as such by Plaintiffs. *See Compl. ¶ 49* ("Uber provides an online and mobile application—the
26 'Uber App.' The Uber App connects persons seeking transportation with persons who use their
27 personal vehicles to provide transportation in exchange for compensation. Users request and pay
28 for rides through the customer version of the Uber App. Drivers are notified of requested rides,
which they can then accept and be compensated for by Uber through the driver version of the Uber
App."); *see also id. ¶¶ 13* (referring to "Uber's services"), 70 ("transportation services"); 73
("transportation services"), 179 (stating that Uber "offer[s] a service"); 206 (referring to "children
using [Uber's] service"]; 390 ("Uber charges standard fees for its services through its
application."); 391 ("Any member of the public can use Uber's transportation services."). If
Plaintiffs seek to amend their complaint to revive their product liability claims, Uber reserves the
right to seek dismissal of any such amended claim on these and other grounds.

1 Court held that, “Plaintiffs cannot point to an injury-in-fact relating to Uber’s misrepresentations
 2 because they have not plead specific facts showing those misrepresentations occurred,” and that
 3 “Plaintiffs have made insufficient allegations that any individual plaintiff has more than a ‘tenuous
 4 likelihood of future injury.’” *Id.* at 49-50 (quoting *Doe v. Match.com*, 789 F. Supp. 2d 1197, 1200
 5 (C.D. Cal. 2011)). Because the same constitutional standing requirements apply to all Plaintiffs’
 6 claims for injunctive relief irrespective of the residence of the Plaintiff or location of the incident,
 7 the same reasoning that requires dismissal of all of Plaintiffs’ claims for injunctive relief under
 8 California and Texas law, applies equally under Florida, Illinois and New York law.

9 **VII. PUNITIVE DAMAGES**

10 In PTO 17, the Court concluded that punitive damages are available under California and
 11 Texas law. Although Uber respectfully disagrees, Uber is not at this time seeking dismissal of the
 12 punitive damages claims under Florida, Illinois and New York law, and Uber reserves the right to
 13 do so at a later stage of the case.

14 **CONCLUSION**

15 For the foregoing reasons and those discussed further in Uber’s motion to dismiss briefing,
 16 ECF Nos. 384-388, 538, the Court respectfully should grant Uber’s Motion to Dismiss Plaintiffs’
 17 claims for vicarious liability, fraud, negligent infliction of emotional distress, negligent
 18 entrustment, product liability, and injunctive relief under the laws of Florida, Illinois and New
 19 York.

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 21 DATED: September 13, 2024

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